

**Application No. 10/536,970**  
**PRELIMINARY AMENDMENT**

**REMARKS**

This response is submitted under 37 C.F.R. § 1.116 to the Advisory Action of August 3, 2009.

Claims 1 through 6 and 17 through 28 are pending in this application. Claim 1 is amended. Support for the amendment to claim 1 is found in former claim 4. Claims 4 and 7 through 16 are canceled. Claims 17 through 28 are withdrawn as being directed to a non-elected invention. No new matter is added.

A Request for a One-Month Extension of Time with a check for the \$130 Official Fee accompanies this response.

A Request for Continued Examination with a check for the \$810 Official Fee accompanies this response.

In the event the amount of the checks is incorrect, any difference may be charged or credited to Deposit Account Number 12-1210.

**1. Request to Remove “Final” Designation**

The Applicants maintain request that the Examiner remove the “final” designation of the Office Action of April 24, 2009.

The previous Office Action of November 24, 2008, presented only two rejections based upon citations of art. Each rejection relied upon U.S. Patent Number 5,272,855 to Togi et al. as its sole or primary reference.

The Applicants traversed the Togi et al. citation, and reliance upon Togi et al. has been completely withdrawn.

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The new Office Action presents two rejections based upon obviousness. Each of these two rejections relies on U.S. Patent Number 5,277,015 to Brown et al. as its sole or primary reference.

The designation of the new Office Action as “final” is believed to be inappropriate because of the sole or primary reliance on new art. The Brown et al. patent is not added to the original rejections to supplement the Togi et al. reference. The Togi et al. reference is completely removed.

Removal of the “final” designation is believed to be warranted in order to permit the Applicants a full opportunity to address the new art. Removal of the designation is requested.

**2. Rejection of Claims 1, 2, 4, and 5 under 35 U.S.C. § 103(a)**

The Examiner rejects claims 1, 2, 4, and 5 under 35 U.S.C. § 103(a) as being made obvious by U.S. Patent Number 5,277,015 to Brown et al. The Applicants traverse this rejection and request reconsideration.

The Brown et al. patent discloses a method of inserting a flexible bag into a bottle. This method is described in claim 1 of the patent as requiring the following steps:

- (a) grasping the bag via the substantially rigid fitment;
- (b) inserting a plunger through the passage of the fitment into and against the bottom end of the bag;
- (c) folding the bag into a predetermined configuration;
- (d) pushing the folded bag into the bottle through the orifice of the bottle utilizing the plunger; and

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- (e) expanding the bag after the substantially rigid fitment is partially seated into the orifice of the bottle; further comprising the steps of:
- (f) partially seating the rigid fitment such that an air vent channel is formed between the bottle finish and the fitment to vent air from the bottle as the bag is expanded; and
- (g) partially seating the rigid fitment such that an air vent channel is formed between the bottle finish and the fitment to vent air from the bottle as the bag is expanded; and
- (h) fully seating the fitment after expanding the flexible bag such that the air vent channel becomes sealed.

Further in claim 2, it is said that the folding step comprises folding the bag into a predetermined C-shaped configuration.

The folding step of the Brown et al. is obtained by the funnel 224 that includes means for folding the envelope portion (*see* column 10, lines 50 to 69). The means for folding the envelope portion comprises two triangular plows 254 extending from the interior surface of the funnel.

As the bag 24 of the Brown et al. patent is inserted (by means of the plunger; *see* end of column 10 beginning of column 11), the plows 254 contact the edges of the bag 24 and urge them to fold over so the envelope portion 32 of the bag 24 is folded into a C-shape as the bag 24 progresses through the funnel 224. Because a vacuum is applied to the bag through the holes of the plunger, as the bag is inserted through the funnel 224 and into the bottle 22, it is clear that the plunger pushes the bag through the funnel.

The Office Action states that “Brown discloses performing the folding operation “off-center” with regard to funnel 224.” (*See* Office Action p. 3.) However, Brown discloses that

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the upper ends of the plows are preferably attached to the funnel surface slightly off-center from the funnel axis so the bag does not catch on the plows as it enters the funnel. (See Brown, col. 10, lines 60 through 68.) The off-center nature of the plows in Brown, which are not a portion of the bag at all, is not equivalent to the off set neck of the bag in the Applicants' claim 1.

The off set neck in the Applicants' claim 1 off sets the neck of the bag from the center of the panel of the bag. The folding of the bag is in relation to the off set neck of the bag and not around a center point. This orientation of the neck of the bag in Applicants' claim 1 reduces the stresses placed on the seams of the bag.

The Applicants ask the Examiner to reconsider his comment that the folding into a C-shape is a folding along two parallel fold lines (second and third). The step is merely a pushing step that yields in a curved position of the pushed bag.

Brown et al. do not disclose or render obvious:

- (1) a first folding of the bag about a first fold line;
- (2) a second folding about a second fold line; and
- (3) a third folding about a third fold line with the second and third fold lines being parallel to each other and perpendicular with respect to the first fold line.

Indeed, Brown et al. disclose a bag that is forced through an aperture of a bottle via a funnel by means of a funnel comprising two plows. Therefore, the bag is merely curved due to the fact that (1) the insertion orifice reduces with the insertion route and (2) the plunger is in contact with the bottom of the bag (center of the bottom of the bag) and pushes it through the orifice of the bottle. (*See also* column 2, line 17.)

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The Brown et al. method of inserting a bag into a bottle does not make obvious a step of folding the bag into overlapping panels comprising three distinct and proper folding steps. Brown et al. merely reach a step of “cramming” the bottle orifice with the bag.

Further, the Brown et al. patent states that the flexible envelope portion 32 of the bag 24 preferably has shoulders 54. The shoulders 54 taper such that the tendency of the upper corner of the envelope portion 32 of the bag 24 to become trapped between the fitment 30 and the bottle finish during the insertion process is significantly reduced. (See column 4, lines 3 to 9).

It is therefore clear that the seam of the bag in the Brown et al. patent is in contact with the finish of the bottle and that the tension strength is not reduced, since the exposition of the seams is not reduced by a proper folding method into overlapping panels.

The teaching of the Brown et al. patent of the insertion of a C-shaped configuration does not solve the technical problem that the Applicants' claimed invention solves. The seams of the Brown et al. bag are exposed during insertion and therefore subject to wear. (See also last line of column 10: “As the bag 24 is inserted, the plows 254 contact the edges of the bag 24 and urge them to fold over so the envelope portion 32 of the bag 24 is folded into a ‘C’ shape as the bag 24 progresses through the funnel 224” (emphasis added).)

This rejection should be withdrawn.

**3. Rejection of Claims 3 and 6 under 35 U.S.C. § 103(a)**

The Examiner rejects claims 3 and 6 under 35 U.S.C. § 103(a) as being obvious over U.S. Patent Number 5,277,015 to Brown et al. in view of U.S. Patent Number 6,132,350 to Krueger et al. The Applicants traverse this rejection and request reconsideration.

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The Applicants address above the failure of the Brown et al. patent in rendering claim 1 obvious. Claims 3 and 6 are dependent on claim 1. The citation of the Krueger et al. patent with the Brown et al. patent does not make obvious the recitations of claims 3 and 6. Krueger et al. disclose a bag-type liner having a leading sealed, and a trailing unsealed, end that is fed along a predetermined liner path. The trailing unsealed end is suspended above the container. A plurality of clamps grab the sides of the bag at the unsealed end and separate the unsealed end by pulling the sides apart. A vacuum is then activated to draw air out of the container, drawing the wall of the liner material against the interior surface of the container, thereby fully opening the liner in the container. (*See* Krueger et al., Abstract.)

Krueger et al. do not disclose or suggest the elements of the Applicants' claim 1 or claims 3 and 6, which are dependent on claim 1. Krueger et al. do not teach or suggest folding the bag into overlapping panels having a bag cross-sectional area able to pass through the aperture cross-sectional area and inserting the folded bag through the aperture into the container. Further, Krueger et al. do not disclose or suggest a first folding of the bag about a first fold line, a second folding about a second fold line, and a third folding about a third fold line wherein the second and third fold lines are parallel to each other and perpendicular to the first fold line.

This rejection should be withdrawn.

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In view of the foregoing, it is submitted that this application is now in condition for allowance, and favorable consideration of the application is respectfully requested.

Respectfully submitted,

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Date



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